

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Bismillah
a.k.a. Phillip Douglas Jacobs,

Plaintiff,

-vs-

Case No. 3:18 CV 2741

ORDER DISMISSING COMPLAINT

JUDGE JACK ZOUHARY

Bureau of Medical Services, *et al.*,

Defendants.

Plaintiff *pro se* Bismillah, also known as Phillip Douglas Jacobs, an inmate at Marion Correctional Institution, brings this lawsuit under Section 1983 and seeks to proceed *in forma pauperis* (Docs. 1, 2). As in his numerous earlier lawsuits, Bismillah alleges his medical treatment and other conditions of his confinement violate the Eighth Amendment.

Under the three-strikes rule, a prisoner may not bring a civil action or appeal *in forma pauperis* if he has, on three or more prior occasions while incarcerated, brought a federal court action or appeal that was dismissed on grounds of frivolousness, maliciousness, or failure to state a claim. 28 U.S.C. § 1915(g). An exception to this rule is where the prisoner can show he is under “imminent danger of physical injury.” *Id.* The imminent danger exception is “a pleading requirement subject to the ordinary principles of notice pleading.” *Vandiver v. Prison Health Servs., Inc.*, 727 F.3d 580, 585 (6th Cir. 2013) (citation omitted). To qualify for the exception, a plaintiff must plead sufficient “facts from which a court, informed by its judicial experience and common sense, could draw a reasonable inference that [he] was under an existing danger at the time he filed his complaint.” *Id.* (alteration

in original) (citation omitted). Allegations of past dangers are insufficient. *Id.* The then-existing danger must be a “real and proximate . . . danger of serious physical injury.” *Rittner v. Kinder*, 290 F. App’x 796, 797 (6th Cir. 2008) (internal quotations and citation omitted).

Bismillah is a frequent filer in federal court who has, on more than three prior occasions while incarcerated, filed a civil action that was dismissed on grounds that it was frivolous, malicious, or failed to state a claim. *See Bismillah v. Mohr*, 2018 WL 4573268, at *2 (N.D. Ohio 2018) (citing cases). Indeed, as recently noted, Bismillah has filed at least twenty-seven lawsuits in federal court, and has been denied pauper status, or had his pauper status revoked, in at least three prior cases he has filed. *Id.*

In this lawsuit, Bismillah asserts he is in “imminent danger of serious physical injury” because Defendants temporarily did not provide him medication for his heart disease (Doc. 1 at 7). Bismillah has received extensive treatment for his heart problems throughout his incarceration. He contends his “most recent” episode of “triple-blockages” in October 2018 resulted after medication previously prescribed for him was “stopped” in 2016 (*id.* at 5).

But Bismillah alleges no facts showing imminent danger of serious harm at the time he filed his Complaint on November 28. He admits that, after the October episode, he was treated by heart specialists at the Ohio State University Hospital and those doctors “reordered” his medication (*id.*). Bismillah does not allege he was deprived of needed medication after this October episode, or that he faced any real and proximate danger of harm when he filed his Complaint.

The numerous attachments to the Complaint, including hospital records from 2016 (Doc. 1-1), grievance forms from 2016 (Doc. 1-2), and other documents whose dates range back decades, similarly do not demonstrate imminent danger of physical harm at the time he filed his Complaint.

The application to proceed *in forma pauperis* (Doc. 2) is denied, and this action is dismissed without prejudice under the three-strikes rule. If the action is refiled, it must be accompanied by the full filing fee. This Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith.

IT IS SO ORDERED.

s/ Jack Zouhary
JACK ZOUHARY
U. S. DISTRICT JUDGE

December 19, 2018